

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3       RODERICK SKINNER,

Case No.: 3:22-cv-00352-ART-CSD

4               Plaintiff

**Order**

5       v.

6       EDWARD T. REED, ESQ,

7               Defendant

8  
9       Plaintiff is an inmate within the Nevada Department of Corrections (NDOC), housed at  
10   the Northern Nevada Correctional Center (NNCC). He filed a civil rights complaint pursuant to  
11   42 U.S.C. § 1983 against Edward T. Reed at the Public Defender's Office. (ECF No. 1-1.)  
12   Plaintiff alleges that Reed represented him as appointed counsel on his post-conviction petition  
13   for writ of habeas corpus and was deficient in that representation.

14       The Local Rules of Practice for the District of Nevada provide: "Any person who is  
15   unable to prepay the fees in a civil case may apply to the court for authority to proceed *in forma*  
16   *pauperis* (IFP). The application must be made on the form provided by the court and must  
17   include a financial affidavit disclosing the applicant's income, assets, and liabilities." LSR 1-1.  
18   When a prisoner seeks to proceed without prepaying the filing fee, in addition to filing the  
19   affidavit, the prisoner is required to submit a certified copy of the trust fund account statement  
20   (or institutional equivalent) for the six-month period immediately preceding the filing of the  
21   complaint. The statement must be obtained from the appropriate official at the prison or  
22   detention facility where the prisoner is or was confined. 28 U.S.C. § 1915(a)(2).

23       When a prisoner brings a civil action IFP, the prisoner is still required to pay the full  
amount of the filing fee. The court is required to assess, and when funds exist, collect an initial

1 partial payment of 20 percent of the greater of: (A) the average monthly deposits in the  
2 prisoner's account or (B) the average monthly balance in the prisoner's account for the six-  
3 month period immediately preceding the filing of the complaint. Thereafter, whenever the  
4 prisoner's account exceeds \$10, the prisoner must make monthly payments of 20 percent of the  
5 preceding month's income credited to the prisoners account until the filing fees are paid. The  
6 funds are to be forwarded by the agency having custody of the prisoner. 28 U.S.C. § 1915(b)(1),  
7 (2).

8         The regular filing fee is \$402, consisting of the \$350 filing fee and a \$52 administrative  
9 fee. If an inmate does not qualify for IFP status, he must pay the full \$402 filing fee. If the  
10 inmate qualifies for IFP status, the \$52 administrative fee is waived, and the inmate will only pay  
11 the \$350 filing fee over time.

12         Plaintiff has not submitted the IFP application or the required financial certificate. Nor  
13 has he paid the filing fee.

14         The Clerk shall **SEND** Plaintiff a copy of the instructions and application to proceed IFP  
15 for an inmate. Plaintiff has **30 days** from the date of this Order to either file his completed IFP  
16 application and financial certificate or pay the full \$402 filing fee.

17         Once Plaintiff has filed his completed IFP application and financial certificate or paid the  
18 filing fee, the court will screen the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) or 28 U.S.C.  
19 § 1915A, or both. Both require dismissal of a complaint, or any portion thereof, that is frivolous  
20 or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief  
21 against a defendant who is immune from such relief. If the complaint is dismissed on screening,  
22 there will be no refund of the filing fee, and an inmate proceeding IFP is still required to pay the  
23 \$350 filing fee over time.

1 The court has undertaken a preliminary review of Plaintiff's complaint and Plaintiff only  
2 names his public defender as a defendant.

3 42 U.S.C. § 1983 provides a mechanism for the private enforcement of substantive rights  
4 conferred by the Constitution and federal statutes. Section 1983 "is not itself a source of  
5 substantive rights, but merely provides a method for vindicating federal rights elsewhere  
6 conferred." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (internal quotation marks and citation  
7 omitted). To state a claim under section 1983, a plaintiff must allege: (1) his or her civil rights  
8 were violated, (2) by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42,  
9 48-49 (1988).

10 The public defender when acting in role of advocate is not a person acting under color of  
11 state law for purposes of section 1983. *See Georgia v. McCollum*, 505 U.S. 42, 53 (1992); *Polk*  
12 *County v. Dodson*, 454 U.S. 312, 320-25 (1981); *Jackson v. Brown*, 513 F.3d 1057, 1079 (9<sup>th</sup>  
13 Cir. 2008); *Szjarto v. Legeman*, 466 F.2d 864, 864 (9th Cir. 1972) (per curiam) (claim of  
14 ineffective assistance of a retained trial attorney was not a cognizable claim under section 1983  
15 because "an attorney, whether retained or appointed, does not act 'under color of state law.'").  
16 Therefore, it is likely that when the complaint is screened it will be dismissed, and Plaintiff will  
17 not be refunded his filing fee. As such, Plaintiff may also advise the court within 30 days that he  
18 wishes to voluntarily dismiss this action.

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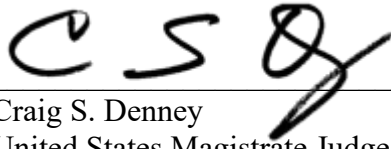
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1 If Plaintiff fails to timely file a completed IFP application and financial certificate or pay  
2 the filing fee, this court will recommend dismissal of this action without prejudice.

3 **IT IS SO ORDERED.**

4 Dated: August 31, 2022

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6 Craig S. Denney  
United States Magistrate Judge